

BACKGROUND PAPER FOR HEARING JANUARY 6, 2004

ATHLETIC COMMISSION

IDENTIFIED ISSUES, QUESTIONS FOR THE COMMISSION AND BACKGROUND CONCERNING ISSUES

GENERAL INFORMATION: The State Athletic Commission (Commission) was created by initiative of the people of California in 1924. The Commission is responsible for protecting the health and safety of boxers, kickboxers and martial arts fighters by administering the laws relating to the State Boxing Act. It also must comply with the federal Professional Boxing Safety Act and Muhammad Ali Boxing Reform Act. Functionally, the Commission consists of four components: licensing, enforcement, regulating events and administering the Professional Boxers' Pension Fund (Pension Fund). Its responsibilities include establishing requirements for licensure, issuing and renewing licenses, approving and regulating events, assigning ringside officials, investigating complaints received, and enforcing applicable laws by issuing fines and suspending/revoking licenses. There are approximately 100 professional boxing events, 150 amateur boxing events and 70 professional/amateur full-contact martial arts events held in California each year.

PRIOR SUNSET REVIEW: The Joint Legislative Sunset Review Committee (Joint Committee) last reviewed the Commission four years ago (1999/2000). The Joint Committee identified a number of issues and problem areas concerning the Commission and made the following recommendations: (1) the state should continue regulating boxing and other contact sports; (2) continue the present regulatory structure of the Commission; (3) the Commission should review whether its licensing fees should be increased and identify alternative funding mechanisms to ensure that its critical consumer protection is continued; (4) the Commission should take various steps to make the Pension Fund sustainable; (5) the Commission should pursue an opinion from the Attorney General on what authority it may have to enforce its health and safety standards for boxing matches held in Indian casinos and what assessments of the Commission's may be collected; (6) the Joint Committee shall seek a Legislative Counsel Opinion to determine if the Commission has current authority to set regulatory standards for pregnancy testing. If not, then the Commission should conduct a public hearing to address this issue before pursuing legislation to grant it authority to establish standards for pregnancy testing; and (7) the Commission should review whether peace officer status for the Commission's inspectors is necessary, or whether other qualifications for employment should be required to assure inspectors have adequate and independent enforcement authority.

In October 2003 the Commission submitted its required sunset report to the Joint Committee. In this report, information of which is provided in Members' binders, the Commission described actions it has taken since the Commission's prior review.

The following are unresolved issues pertaining to this Commission, or areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff has asked concerning the particular issue. The Commission was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

COMMISSION ADMINISTRATION ISSUES

ISSUE #1: A recent operational audit conducted by the Department of Consumer Affairs reveals that the Commission is experiencing many operational deficiencies, which are hindering its ability to comply with all applicable laws and regulations.

Question #1 for the Commission: *What is the Commission doing to implement a sound strategic planning process for measuring the effectiveness of its operations? What steps is the Commission taking to improve its accounting and collection process? Is the Commission implementing standardization for its files? What steps is the Commission taking to maximize its collection of revenues available under the law? How much money would the Commission need to update its information technology system and are there less expensive alternatives that the Commission can take? What is the Commission doing to ensure that its inspectors are properly trained and consistently enforcing the law? What is the Commission doing to improve its licensing process? Are field inspectors issuing licenses? Has the Commission implemented a tracking system for all complaints it receives?*

Background: The Department of Consumer Affairs' (Department) Internal Audit Office (Office) recently completed an operational audit of the Commission. The audit examined the Commission's strategic planning process and its core business operations, with the focus relating to the oversight of professional boxing. The audit revealed that the Commission is experiencing many operational deficiencies, which are hindering its ability to comply with all applicable laws and regulations. Recent budget cuts have also contributed to the ineffectiveness of several operational activities.

The audit found that the Commission lacks a sound strategic planning process for measuring the effectiveness of its operations. This conclusion was based in part on a finding that the Commission did not follow many recommended state strategic planning guidelines, including a monitoring system which would enable management to assess its progress in meeting defined goals. The audit recommended that the Commission adopt a monitoring schedule of routine progress reports to assess its success in achieving goals and objectives and that the Commission should work with the Department's E-Government and Special Programs Division to revise its strategic plan.

The audit identified several deficiencies such as inaccurate revenue collections, inappropriate cash handling procedures, missing documentation and disorganized show files. The Office concluded that the Commission needs to take steps to address these issues because it runs the risk of not enforcing the laws and regulations enacted to protect the health and safety of boxers. The Office recommended that the Commission take steps to improve its accounting and collecting process, implement a quality control process to enhance proper record keeping, and adequately train its staff to ensure they understand their responsibilities and duties relative to all applicable laws and regulations.

The audit found that the Commission's information technology system is outdated and contributes to many of the Commission's inefficient operations. The Office recognized that given the current fiscal crisis that the Commission's ability to replace its outdated system is severely limited but, found that other steps could be taken to enhance its operations by using existing technology and resources.

The audit found that the Commission's licensing process could benefit from several improvements. The audit revealed that the Commission needs to improve its licensing operations, in particular same-day licensing handled by its field inspectors. While the Office noted that licenses are being processed in a timely manner and staff is generally enforcing licensing requirements, it also found several licensing procedures not being consistently performed. As a result, many deficiencies were noted which increase the risk of approving applicants who may not qualify under the law. The Office recommends that the Commission formalize its licensing process by establishing a written procedural manual and implementing a quality control system to provide further assurance that licensing requirements are satisfied and properly documented. Additionally, inspectors need to be adequately trained to ensure they understand all licensing requirements.

Finally, the audit found that the Commission does not have a tracking mechanism for all of the complaints it resolves and that the Commission needs to enhance its complaint handling process.

ISSUE #2: The Pension Fund has experienced a consistent decline in value over the last three years.

Question #2 for the Commission: *What is the Commission doing to ensure the long-term viability of the Pension Fund? What can the Commission do to reduce the Pension Fund's operating expenses? Is it appropriate to house the Pension Fund somewhere else?*

Background: Pursuant to Section 18881 of the Business and Professions Code, the Commission is required to establish a pension plan for boxers who engage in boxing contests in California. Originally created in 1981, the pension plan was changed from a "defined benefit" plan to a "defined contribution" plan in 1996. The pension plan is no longer funded by contributions from boxers, managers and promoters. Funding is now based on a per-ticket assessment (both tickets sold and complimentary tickets) for each professional boxing event. The per-ticket assessment was established at 46 cents per-ticket but was subsequently increased to 88 cents per-ticket.

According to the recently completed operational audit, the Office verified the fact that the Pension Fund has experienced a consistent decline in value over the last three years. The decrease can be attributed mainly to the loss of value in the Wachovia Investment Fund in which the majority of the pension contributions are invested. In January 2000, the investment fund consisted of \$3,394,501; in January 2003, the balance was \$2,634,880. The Office noted the Commission expends a relatively large amount of the Pension Fund on staff time and administration costs. The Pension Fund supports a half-time staff services analyst position and during the past five fiscal years, 74% to 92% of the Pension Fund's operating expenses were related to consultant or attorney fees. While future market conditions may offset the recent losses suffered in the Wachovia investment account, continued high administration costs could impact the future pension benefits of boxers enrolled in the plan.

COMMISSION POWERS & ENFORCEMENT ISSUE

ISSUE #3: Should the Commission be arbitrating disputes between boxers and managers?

Question #3 for the Commission: *What is the yearly average number of disputes submitted to the Commission? Why are these arbitrated by the Executive Officer and not the Commission? If the Commission had to pay the Attorney General for these services, on average how much would each dispute cost? Is there a consistent problem/theme in these disputes? Is the Commission doing something to educate its licensees to avoid initial and repeat offenders? What other types of enforcement cases are handled by staff?*

Background: According to the Commission's current report to the Joint Committee, the Commission has an Arbitration Committee and the functions of this committee have been delegated by the Commission members to the Executive Officer. The Arbitration Committee is responsible for reaching binding arbitration decisions in boxer/manager contractual disputes. The Commission's report indicates that the majority of complaints are received from licensees in regard to boxer/manager contract disputes. In instances of boxer/manager contract disputes, either party may request mediation assistance. All requests must be directed to the Commission in writing. These disputes may involve an arbitration hearing, which, due to the authority vested in the Commission, do not involve an arbitration law judge. Licensed boxers submit 98% of the arbitration requests received by the Commission. The formal arbitration is conducted by the Executive Officer with legal counsel provided by the Office of the Attorney General.

COMMISSION BUDGETARY ISSUES

ISSUE #4: The Commission is seeking the authority to change from a General Fund agency to a special fund agency. Should the Commission continue as a General Fund agency or be changed to a special fund agency?

Question #4 for the Commission: *Will the Commission be self-reliant during FY 04-05? If so, what specifically has changed in the Commission's budget to eliminate its reliance on the General Fund? Are there benefits, besides the free 600 yearly hours of attorney time from the Office of the Attorney General, the Commission will lose by changing to a special fund agency? How will the Commission cover these losses?*

Background: According to the Commission's current report to the Joint Committee, although the Commission is a General Fund Agency it is a revenue producing agency in which all collected revenues are deposited back into the General Fund. The Commission has historically relied on the General Fund for approximately 3-4% of its budget. These General Fund deposits help offset the Commission's expenditures. The Commission's current report indicates that due to budget reductions in FY 01-02 and FY 02-03 the Commission's revenues now exceed the budget appropriation.

According to the recently completed operational audit, in fiscal year 2003-04, the Commission's General Fund appropriation was reduced by \$41,060, and it may still be subject to the 16% cut included in its reduction plan submitted to the Department of Finance. If the reduction plan is approved, the Commission's appropriation would drop to \$540,120, which would reflect a 39% reduction from the fiscal year 2001-02 appropriation amount.

According to the Commission, budget cuts have restricted its ability to conduct mandated training clinics for officials working the events; administer competency exams required to be licensed as a referee, judge, manager, promoter or matchmaker; and assign the optimal number of inspectors to oversee competitions. According to the audit, these shortcomings have the potential to significantly compromise the health and safety of competitors. The lack of inspector clinics and/or insufficient inspectors regulating events also increases the likelihood of applicable laws and regulations not being adequately enforced.

According to the audit, the Commission is pursuing a legislative proposal and a Budget Change Proposal (BCP) to eliminate its reliance on the General Fund. The Office believes the Commission is taking a proper course of action for establishing a secure funding source for its support activities. Additionally, establishing a special fund could heighten receptiveness to potential fee increases since the monies would directly benefit industry activities instead of being deposited into the General Fund.

ISSUE #5: Do the Commission's revenue sources need to be changed in light of the fact that it receives money from an event it does not regulate – wrestling – and for a program it no longer operates – the Neurological Examination Program?

Question #5 for the Commission: *How much and what percentage of the Commission's budget comes from wrestling events? How much and what percentage of the Commission's budget comes from the neurological fee? Is there anything else the Commission receives money from but provides no regulatory function?*

Background: While the Commission's authority to regulate wrestling was repealed in 1989 (AB 1040, Floyd, Chap. 757, Statutes of 1989), its authority to collect a 5% gate "tax" remains. According to the Commission's current report to the Joint Committee, its major source of revenue is the 5% gate tax on live professional boxing events and professional wrestling exhibitions.

Pursuant to Business and Professions Code Section 18711, all professional boxers are required to pass a neurological examination as a condition of licensure. While the Commission completely revised the neurological examination program in 1997, promoters are still being assessed 60 cents per-ticket sold and complimentary tickets. A neurological examination is still required and must be administered by a neurologist or neurosurgeon; however, the Commission no longer requires applicants to be seen by a neurologist or neurosurgeon under contract with the Commission. An applicant may now be examined by any licensed neurologist or neurosurgeon in any state.

According to the recently completed operational audit, in an effort to address its funding shortage, the Commission has been using the Boxers' Neurological Assessment Account (Neuro Fund) to support staff working on non-related neurological activities. The Office believes the Neuro Fund should be used only for neurological-related activities as specified in law. The Office believes the Commission has been incorrectly charging personnel expenses equivalent to one full-time staff services analyst position to the Neuro Fund. Current law states the Commission may assess promoters, managers, or professional boxers to fund the Neuro Fund to cover all costs associated with the exam requirement. The audit identified the two staff that the Commission was charging half of their time to the Neuro Fund and found their daily activities only include a very small portion of time related to the exam requirement. Furthermore, the audit noted that an office technician performing licensing activities is responsible for reviewing the neurological exam results, but none of her time is charged to the Neuro Fund. The Office does not believe all of the neurological-related activities performed by Commission staff constitute the work of a full-time position.

ISSUE #6: The Commission charges promoters a \$1500 flat fee for events on tribal lands instead of the 5% assessment on the gross sale of tickets. The Commission does not collect from promoters the per ticket assessment for the Professional Boxers' Pension Program for events on tribal lands.

Question #6 for the Commission: *When was the \$1500 fee established? How did the Commission arrive at this amount and is it still enough to cover the Commission's expenses? Has the Commission tried to collect the per ticket assessment from the promoters for events on tribal lands?*

Background: The Commission performs supervisory services at events on tribal lands for a flat fee of \$1500. According to the Commission's current report to the Joint Committee, state laws are not applicable on sovereign land and it is not uncommon for 25% of California bouts to take place on reservations. The Federal Boxing Act does authorize state athletic commissions to supervise live boxing events held on tribal land if that particular tribe does not have a tribal athletic commission with health and safety rules at least equal to those of that particular state. The Commission supervises all professional boxing events held on tribal land at the request of the majority of the tribes whether there is a tribal athletic commission in place or not. According to the Commission's current report to the Joint Committee, it is seeing lost tax revenue based upon gross ticket sales because the Commission performs supervisory services for a flat fee of \$1,500. Another drawback to these events is that the Commission cannot collect the per ticket assessment for the Professional Boxers' Pension Plan contributions. Additionally, since no contributions are made to the pension plan, the rounds that the boxers accumulate do not count toward the pension plan's vesting or benefit criteria.

During the Commission's prior review, the Joint Committee recommended that the Commission take steps to make the pension fund sustainable, including, negotiating revisions to the fee for overseeing events on tribal lands and reviewing the current level of ticket assessments.

COMMISSION LICENSING ISSUES

ISSUE #7: AB 1074 (Chavez) would require a boxer who is rendered unconscious during a professional boxing match to undergo a magnetic resonance imaging (MRI) examination of the brain within 24 hours of being rendered unconscious. The MRI examination results would be provided to either a neurologist or a neurosurgeon who would give an opinion in writing whether the boxer is fit to compete after any period of suspension that may be applicable by a statute or regulation. This measure was held in the Senate Business and Professions Committee so that the Joint Committee could review it.

Question #7 for the Commission: *Does current law provide enough protections for boxers rendering AB 1074 unnecessary or is it meritorious? Is this something that the Medical and Safety Standards Advisory Committee has or can consider?*

Background: According to the Commission's current report to the Joint Committee, professional boxing has long been known as a "blood sport" where the object is to render an opponent unconscious. The testing of licensees is crucial due to the nature of the sport and the fatal consequences that could occur if unqualified people are licensed.

All professional boxers are required, pursuant to Business and Professions Code Section 18711, to pass a neurological examination as a licensing condition. According to the Commission's current report to the

Joint Committee, a neurological examination such as this has shown that multiple blows to the brain and prolonged blunt force trauma can significantly contribute to irreversible neurological brain damage. If these tests can detect even subtle physical changes a boxer's health and safety will not be compromised. In addition to the neurological testing requirement as a condition of licensure, all professional fighters must submit negative laboratory results relative to the presence of antibodies to the human immunodeficiency virus (HIV) and the presence of the antigen of virus hepatitis type B (HBV) and hepatitis type C (HCV).

Business and Professions Code Section 18645 creates, within the jurisdiction of the Commission, an Advisory Committee on Medical and Safety Standards. The committee shall consist of six licensed physicians and surgeons appointed by the Commission. The Commission may call meetings of those physicians and surgeons at such times and places as it deems appropriate for the purpose of studying and recommending medical and safety standards for the conduct of boxing, wrestling, and martial arts contests.

AB 1074 (Chavez) was introduced earlier this year and would require a boxer who is rendered unconscious during a professional boxing match to undergo a magnetic resonance imaging (MRI) examination of the brain within 24 hours of being rendered unconscious. Additionally, AB 1074 required the MRI examination results to be provided to either a neurologist or a neurosurgeon who would give an opinion in writing whether the boxer is fit to compete after any period of suspension that may be applicable by a statute or regulation. According to the Author, "current law does not sufficiently protect the health and safety of boxers. Boxing brings with it the danger of injury and even permanent harm. The point of professional boxing is to render your opponent unconscious. In striving to achieve this objective, boxers aim to punch an opponent's head. If someone is knocked out due to a blow, they lose consciousness because they have suffered damage to the brain. A punch landing on the head causes a vast number of brain cells to die, it can kill an individual and can lead to long-term or chronic brain damage. Moreover, there is some evidence that blows to the head can trigger future Alzheimer's Disease and perhaps, even the etiology of Parkinson's disease." The Author ultimately agreed to make this a two-year bill so that this matter could be discussed as part of the Joint Committee's review of the Commission.

ISSUE #8: The Commission has attempted and failed to receive spending authority to implement mixed martial arts proposed regulations.

Question #8 for the Commission: *How much would it cost the Commission to regulate mixed martial arts? How does the Commission propose covering these costs – can they be absorbed with existing resources, both revenue and staff? What harm can occur (is occurring), and to whom, if the Commission does not receive the authority to regulate this activity? Will the Commission also regulate this activity on tribal land?*

Background: According to the Commission's current report to the Joint Committee, since its last review, the Commission has failed in its attempt to implement mixed martial arts regulations and secure additional funding. It appears that the Commission has attempted these regulations at least two times – in 2000 and 2003.

According to the supporting documentation provided by the Commission for its most recent attempt (2003) to regulate mixed martial arts, pursuant to Business and Professions Code Section 18640, the Commission has sole direction, management, control of, and jurisdiction over all professional/amateur kickboxing and full contact mixed martial arts contests. The current regulations only address

kickboxing and do not provide for regulation of other full contact martial arts disciplines per Business and Professions Code Section 18640. Some sections of the current kickboxing regulations are antiquated and are no longer relevant to what is happening in international competition.

A new form of martial arts has surfaced known as mixed martial arts or “submission fighting.” These bouts employ such techniques as choke holds and joint manipulation to force an opponent to submit or “tap-out.” This is basically a “grappling” sport which is full contact. Because these events are full contact mixed martial arts, they should be regulated by the Commission pursuant to the Business and Professions Code Section 18640.

ISSUE #9: It appears unnecessary for the Commission to continue licensing or regulating gymnasiums, sparing partners and assistant matchmakers.

Question #9 for the Commission: *When is the last time the Commission had an applicant or a licensee for any of these 3 categories? Are these categories outdated and in need of revision or can they be eliminated without putting the public or another licensee at risk?*

Background: The Commission is authorized to license and regulate gymnasiums, sparing partners and assistant matchmakers. Business and Professions Code Section 18641 provides that the Commission may license clubs to conduct, hold, or give, and shall license referees, judges, matchmakers, and timekeepers, and may license assistant matchmakers and corporation treasurers, to participate in, or be employed in connection with, professional or amateur boxing contests, sparring matches or exhibitions.

Business and Professions Code Section 18643 provides that no professional boxer shall spar for training purposes with any person not licensed as a professional boxer or who does not have a sparring permit. The Commission may issue a permit to spar with professional boxers for training purposes. This permit shall be issued only to persons who meet the physical and mental requirements for licensure as a professional boxer.

Business and Professions Code Section 18653 provides that no person shall conduct or operate a professional boxers' training gymnasium unless he or she has a license issued by the Commission.

According to the Commission's current report to the Joint Committee, there are currently no licenses issued for any of these 3 categories.

ISSUE #10: The Commission's licenses expire December 31st of each year.

Question #10 for the Commission: *Which of the Commission's licensing categories does it believe need to have a 1- year cycle and why?*

Background: According to the Commission's current report to the Joint Committee, all Commission licenses expire December 31st of each year. The report also indicates that the licensing program is 20% of the Commission's budget and the dollar amount spent for FY 02-03 was \$136,566.

ISSUE #11: The Commission licenses, regulates and trains ringside physicians but does not assess a licensing fee.

Question #11 for the Commission: *How many individuals are currently licensed by the Commission as ringside physicians? Approximately how much does the Commission spend licensing, regulating and training these physicians? How often do these physicians need to be trained and can someone besides Commission staff perform this task? Is an examination required? If so, is this part of the training?*

Background: According to the Commission's current report to the Joint Committee, officials and ringside physicians must pass a written examination relative to the laws and regulations of the Commission. These officials and physicians are required to attend clinics every six months for in-depth training. These clinics are conducted by senior Commission staff and veteran officials. Business and Professions Code Section 18731 requires referees and physicians to attend these clinics on such topics as the recognition and diagnosis of serious or life-threatening, boxing-related and neurological injuries and disorders and referee mechanics.